

**MINUTES  
of the  
FIFTH MEETING  
of the  
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE**

**December 1, 2006  
Room 317, State Capitol  
Santa Fe**

The fifth meeting of the Radioactive and Hazardous Materials Committee was called to order at 10:05 a.m. on Tuesday, September 19, 2006, by Senator Richard C. Martinez.

**PRESENT**

Sen. Phil A. Griego, Chair  
Rep. John A. Heaton, Vice Chair  
Sen. John T.L. Grubescic  
Rep. Manuel G. Herrera  
Sen. Carroll H. Leavell  
Sen. Richard C. Martinez  
Rep. Jim R. Trujillo  
Rep. Jeannette O. Wallace

**ABSENT**

Sen. Vernon D. Asbill  
Rep. Donald E. Bratton  
Sen. Gay G. Kernan  
Rep. Antonio Lujan

**Advisory Members**

Rep. Thomas A. Anderson  
Sen. Mary Jane M. Garcia  
Rep. Nick L. Salazar

Sen. Clinton D. Harden, Jr.  
Sen. William H. Payne  
Sen. John Pinto  
Rep. Mary H. Skeen

**Staff**

Evan Blackstone  
Sarah Salazar

**Guests**

The guest list is in the original meeting file.

**Tuesday, December 1**

**Committee Business**

The committee began with members introducing themselves and staff to the audience.

**Department of Environment Budget Overview**

Jim Perry, director of the Department of Environment's (NMED) Administrative Services Division, provided the committee with an overview of NMED's budget request for fiscal year 2008. He began by outlining NMED's fiscal accountability, pointing out that NMED has

received a clean audit for the third consecutive year and that the department has sound budget and cash management practices. Under the present administration, NMED has not required any deficit appropriations and has maintained a budget that reflects the department's available and recurring special fund balances. Mr. Perry also stated that the department has maintained its transparency by providing information to all parties on its federal grant process.

Mr. Perry went on to review NMED's base budget and expansions for the entire agency and its programs and operations related to water quality, environmental health and the environmental protection. He also explained NMED's base budget and expansions for special revenue sources, including air quality permit fees and solid waste permit fees. Finally, Mr. Perry summarized for the committee the revenues, expenditures and fund balance for NMED's corrective action fund.

Questions and comments included the following subjects:

- the sources of special revenue funds;
- funding sources for the corrective action fund; and
- NMED's request for money from the general fund.

On a motion made, seconded and unanimously adopted, the minutes of the September 19-20 meeting were approved as submitted.

### **Department of Environment Legislative Proposals**

Cindy Padilla, director of NMED's Water and Waste Management Division, began by informing the committee of a few proposals the legislature can expect from NMED in the upcoming 2007 session. The proposals include amendments to the Wastewater Facility Construction Loan Fund and the Rural Infrastructure Act.

Jim Norton, director of NMED's Environmental Protection Division, presented to the committee the final recommendations of the Governor's New Mexico Climate Change Advisory Group (CCAG). In 2005, the governor established the CCAG by executive order and directed the group to prepare a report that includes a projection of New Mexico's future greenhouse gas emissions and policy recommendations for reducing New Mexico's total greenhouse gas emissions to 2000 levels by the year 2012. The CCAG offers 69 policy recommendations to the governor, including recommendations on energy efficiency and the use of renewable energies. Mr. Norton informed the committee that the recommendations will be implemented through administrative processes rather than legislation.

Auralie Ashley-Marx, chief of NMED's Solid Waste Bureau, presented two legislative proposals to the committee. First, Ms. Ashley-Marx explained a proposal that establishes a fund for programs, services and activities for recycling, diversion and household hazardous waste and electronic waste collection. She informed the committee that these programs are expensive for local communities. The legislation would allow NMED to award grants from the fund to communities to assist with programs and initiate new ones that encourage recycling and expand

the number of items that can be recycled.

The second piece of legislation presented by Ms. Ashley-Marx was a \$10,000,000 appropriation to recharge the Solid Waste Facility Grant Fund. She emphasized the importance of the funds to local communities and explained that NMED has been unable to fund over \$9,000,000 in grant requests by communities since 2002. According to Ms. Ashley-Marx, money has not been placed in the fund since 1996. She presented a survey that indicated many communities would apply for grant funds if they were available for certain projects such as landfill closures.

The committee received public comment on the legislation. Speaking in favor of the Solid Waste Facility Grant Fund legislative proposal was Regina Romero, a representative from the New Mexico Municipal League; Joe Steel, De Baca County commissioner; Sam Boyd, a landfill operator in De Baca County; and Mark Turnbough, who has experience in solid waste facility permitting. Cindy Padilla requested that the committee not consider for endorsement the two pieces of legislation.

Finally, James Bearzi, chief of NMED's Hazardous Waste Bureau, presented to the committee proposed amendments to the Hazardous Waste Act. Mr. Bearzi explained that he first presented the concept to the committee at its September meeting and that the current proposal makes a few additional amendments. The legislation provides criminal penalties for used oil violations and corrects an inconsistency in the civil penalty amount for certain violations of the act. Mr. Bearzi emphasized that amending the act to provide certain criminal penalties is necessary for NMED to receive program authorization from the Environmental Protection Agency (EPA). He stated that currently, used oil such as that generated by automotive service businesses, oil transporters and processors is regulated by both NMED and the EPA.

After addressing questions from committee members regarding the legislation, Mr. Bearzi agreed to review and possibly revise some of the legislation's language for clarification. The committee did not consider the bill for endorsement.

Questions and comments included the following subjects:

- concerns regarding the implementation of CCAG recommendations by rule rather than through the legislature;
- funding for CCAG recommendations;
- mandatory and voluntary rules for industry in the CCAG recommendations;
- lack of emphasis for nuclear power in CCAG recommendations;
- distribution to rural areas of recycling, diversion, electronic waste and household hazardous waste collection fund;
- use of recycled tires for New Mexico's highways;
- availability of federal funds for solid waste management;
- position of counties and cities on solid waste management;
- use of used oil in heating by trucking companies;

- definition of used oil and when used oil becomes hazardous; and
- criminal penalties mandated by the EPA.

### **Discussion on NMED's Revised Rules for Septic Tanks**

Representative Jim Trujillo raised concerns regarding NMED's revised rules for septic tanks and the implementation of those rules. He stated that the rules are inhibiting the ability of people to sell their lots because it is expensive to conform to NMED's rules. According to the rules, septic tanks on lots of a certain size must be certified before the land can be sold. If the septic tank cannot be certified, then a new one that is compliant with NMED rules must be installed.

The committee received public comment from residents on both sides of the issue. Paula Barron, a resident of Santa Fe, expressed her support for the rules as a necessity to prevent groundwater contamination. She stated that the wells she drilled on her land are contaminated from septic tanks and the water is not treatable. She urged the committee to examine the role of septic tanks in New Mexico's overall water policy. The committee also received testimony from Paul and Susan Johnson, homeowners in Nambe, and Andres Trujillo, an experienced septic tank system installer. The Johnsons expressed their frustration for the NMED rules, stating that they have unfairly been required to install a \$20,000 septic tank system even though their current septic tank works extremely well. They emphasized that when they bought their home, there were no inspection requirements, and they are now being held accountable for a problem they did not create. The Santa Fe County attorney, Stephen Ross, informed the committee that the county is receiving numerous complaints on this issue and raised the possibility of an amnesty program.

Ana Marie Ortiz, director of the NMED's Environmental Health Division, explained to the committee that NMED is working to improve the program and trying to work with New Mexico citizens adversely affected by the rules. She described the effect of lot size on ground water pollution from septic systems. Ms. Ortiz went on to point out that the rules provide amnesty for existing septic systems that were installed on small lots, provided that they complied with lot size requirements at the time of initial installation.

Questions and comments included the following subjects:

- whether disclosure of the condition of septic tank systems be required to buyers;
- requests from some members that NMED work with the Johnsons, review the rules and bring recommendations back to the legislature; and
- costs of alternative septic tank systems.

### **National Pollution Discharge Elimination System (NPDES) Primacy: River Conservation Interests**

Rachel Conn, policy analyst for Amigos Bravos, and Erik Schlenker-Goodrich, an attorney with the Western Environmental Law Center, provided a presentation on NPDES primacy from the perspective of river conservation. Ms. Conn explained that Amigos Bravos has been participating in the state advisory panel on NPDES primacy and the organization's main

interest in state primacy is to ensure that all waters of the state are protected from unregulated dumping and pollution. In order to ensure that protection, Ms. Conn stated, Amigos Bravos recommends that New Mexico establish a state permit program to protect waters at serious risk of losing federal Clean Water Act protection. Additionally, Amigos Bravos urges the legislature to oppose any attempt to weaken New Mexico's right to set New Mexico-specific standards and protections. This includes supporting the Water Quality Control Commission's existing definition of surface waters and opposing certain limits on New Mexico's right to protect water resources.

Questions and comments included the following subjects:

- the definition of surface waters;
- whether Amigos Bravos has met with NMED and other stakeholders in the NPDES primacy issue;
- specific work of Amigos Bravos and the involvement of acequias; and
- funding sources for Amigos Bravos.

### **New Mexico Office of Natural Resources Trustee**

Martin Heinrich, the New Mexico natural resources trustee, summarized the mission of the New Mexico Office of Natural Resources Trustee (ONRT) and presented legislation the office is supporting in the upcoming 2007 session. He explained that ONRT's mission is to assess injury to natural resources caused by release of hazardous substances or oil and to seek compensation from the responsible parties for the restoration of those injured resources. Mr. Heinrich described the process by which compensation is provided, which begins with the identification of a release of a hazardous substance or oil and is followed by an assessment of the nature and extent of injury to natural resources. The next step is to determine fair compensation for the injury or loss of the resources and the services provided by those resources from the time the injury occurred to their full recovery. Compensation is either in the form of appropriate restoration projects or cash settlements. Mr. Heinrich informed the committee that ONRT uses a cooperative assessment approach that results in more restoration and less litigation.

Mr. Heinrich explained the legislation that amends the Natural Resources Trustee Act to provide for management and use of money in the Natural Resources Trustee Fund. Since 2004, the office has received no new funds for case startups, and the legislation would provide a sustainable funding stream to finance new cases. The amendments would allow the funds that responsible parties pay to reimburse ONRT costs to be used to pay for new case startups. The committee did not consider the legislation for endorsement.

Questions and comments included the following subjects:

- where money currently goes when responsible parties pay costs;
- ONRT's operating budget;
- whether ONRT funds are earmarked for a specific project or if the trustee can determine where money is spent;
- concern that money not earmarked for a specific purpose leads to increased funding

- requests and less oversight by the legislature;
- ownership of resources when restoration is complete; and
- constitutional concerns with the legislation.

### **Update on the Uranium Mining Industry in New Mexico**

Jon Indall, an attorney with Comeau, Maldegen, Templeman and Indall, LLP, and Juan Velasquez, vice president of environmental and regulatory affairs for Strathmore Minerals Corporation, updated the committee on the uranium industry in New Mexico. Mr. Indall began by explaining to the committee that the price of uranium has risen because of the growing popularity of nuclear power. No nuclear power plants have been built in the United States since the 1970s, but currently 20 new units are slated to be running by 2020. Mr. Indall explained that America is projected to need 50 percent more electricity by 2025 than it currently uses. According to Mr. Indall, this need, combined with the need for domestic production to reduce America's dependence on oil, has led to a movement toward acceptance of nuclear energy. Mr. Indall went on to review the cumulative world demand for and supply of uranium.

Juan Velasquez stated that the New Mexico uranium industry is currently experiencing a renaissance with numerous companies postured to begin uranium mining activities. Mr. Velasquez summarized the areas of major uranium deposits in New Mexico, including the Grants region and the San Juan Basin. He also reviewed the various uranium mining companies active in New Mexico today, including Strathmore Resources, which has acquired land positions in the Gallup, Crownpoint and Grants areas. Mr. Velasquez informed the committee that Strathmore is currently performing baseline studies in support of projected in situ recovery (ISR) and conventional mining and milling at Church Rock and Roca Honda.

Mr. Velazquez went on to point out that uranium mining will bring employment and significant capital investment to New Mexico. He stated that the jobs have already begun in the form of environmental contractors and others involved in geologic investigations and drilling work. A reasonable estimate of initial future new uranium activity in New Mexico, Mr. Velazquez concluded, would be for 1,400 direct employees, a payroll of approximately \$90 million and an initial capital investment of around \$630 million.

Questions and comments included the following subjects:

- the impacts of uranium mining on the uranium enrichment facility;
- uranium mining activities on or near Indian land;
- remediation of uranium mining activities near Indian land;
- barriers to reinitiating the uranium industry in New Mexico; and
- staffing resources and jurisdiction of NMED and the Energy, Minerals and Natural Resources Department to oversee uranium mining.

### **Administrative Procedures Reform**

T.J. Trujillo, lobbyist for a regulatory reform effort entitled "regulatory justice", introduced himself to the committee and stated he was appearing on behalf of the Association of

Commerce and Industry (ACI). Mr. Trujillo informed the committee that regulatory justice is a call for consistency and accountability in New Mexico's regulatory framework. The concept is based on the principle that government should create a regulatory system that is simple and clear, enhances confidence, promotes accountability and ensures consistency in administrative proceedings.

Mr. Trujillo explained that in the spring of 2006, various businesses, industry groups, trade associations and other interested parties began meeting in an informal network with the goal of developing proactive solutions to some of the common regulatory obstacles facing the business community. Since then, a variety of groups have signed on to the regulatory justice effort, including the New Mexico Cattle Growers' Association, Dairy Farmers of America and the New Mexico Mining Association. The role of ACI in this effort, Mr. Trujillo pointed out, is to coordinate with the groups to spread the word about regulatory justice, acquire and provide legal and technical expertise and advocate for any legislation for the 2007 legislative session.

Mr. Trujillo went on to update the committee on the current status of the regulatory justice effort. He stated that conceptual draft pieces of legislation have been developed and that ACI has spoken to industry groups, environmental groups, the governor's office and six interim legislative committees regarding the legislation. He said ACI plans to prepare final drafts of the legislation before the legislative session. The primary legislative concepts include applying the Administrative Procedures Act uniformly to all executive agencies, implementing a negotiated rulemaking process and establishing a central panel of administrative law judges and hearing officers.

Questions and comments included the following subjects:

- concerns about rulemaking by executive agencies that violates separation of powers principles;
- legislative approval of agency rules; and
- whether representatives of the regulatory justice effort have met with NMED.

### **Consideration of Legislation**

The committee considered and endorsed the Uniform Environmental Covenants Act for the 2007 session.

There being no further business, the committee adjourned at 4:35 p.m.